

AMENDED IN SENATE AUGUST 2, 2016

AMENDED IN SENATE JUNE 14, 2016

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2895**

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**Introduced by Assembly Member Roger Hernández**

March 1, 2016

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An act to amend, repeal, and add Section 6401.7 of the Labor Code, relating to employment safety.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2895, as amended, Roger Hernández. Employee safety: injury prevention programs.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. ~~Violations of the act under certain circumstances are a crime. The~~ *Division of Occupational Safety and Health enforces and administers the act's provisions. The act requires the division to issue a citation to an employer for specified violations of the act's provisions, as provided.*

The act requires every employer to establish, implement, and maintain an effective injury prevention program. The act requires the program to be written, except as specified, and to include certain elements. The act requires the employer to identify a person responsible for implementing the program and to correct unsafe and unhealthy

conditions and work practices in a timely manner based on the severity of the hazard.

~~This bill would, bill, commencing July 1, 2017, would require an employer to keep a complete, updated copy of the written injury prevention program at each worksite with 3 or more employees and to make it available to any employee upon oral request. The bill would require the worksite copy to be in English and in the language spoken by the majority of the employees at the worksite, as specified. The bill would also require an employer to inform each employee and each new hire of the availability of, and of the employee's rights with respect to inspecting and receiving, a copy of the written injury prevention program, as specified.~~

~~The~~

~~This bill also would require an employer who receives a written request for a copy of the written injury prevention program from a current employee, or his or her authorized representative, to comply within 5 business days and to provide the copy at no cost. The bill would make a violation of this requirement an infraction. The bill would entitle an employee to injunctive relief if an employer has not timely responded to a written request for a complete copy of the written injury prevention program and has failed to comply with the employee's subsequent written demand for compliance unless the division has cited the employer for failing to comply before the employee undertakes the action seeking injunctive relief.~~

~~Because this bill creates a new crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 6401.7 of the Labor Code is amended to
- 2 read:
- 3 6401.7. (a) Every employer shall establish, implement, and
- 4 maintain an effective injury prevention program. The program

1 shall be written, except as provided in subdivision (e), and shall  
2 include, but not be limited to, the following elements:

3 (1) Identification of the person or persons responsible for  
4 implementing the program.

5 (2) The employer's system for identifying and evaluating  
6 workplace hazards, including scheduled periodic inspections to  
7 identify unsafe conditions and work practices.

8 (3) The employer's methods and procedures for correcting  
9 unsafe or unhealthy conditions and work practices in a timely  
10 manner.

11 (4) An occupational health and safety training program designed  
12 to instruct employees in general safe and healthy work practices  
13 and to provide specific instruction with respect to hazards specific  
14 to each employee's job assignment.

15 (5) The employer's system for communicating with employees  
16 on occupational health and safety matters, including provisions  
17 designed to encourage employees to inform the employer of  
18 hazards at the worksite without fear of reprisal.

19 (6) The employer's system for ensuring that employees comply  
20 with safe and healthy work practices, which may include  
21 disciplinary action.

22 (b) The employer shall correct unsafe and unhealthy conditions  
23 and work practices in a timely manner based on the severity of the  
24 hazard.

25 (c) The employer shall train all employees when the training  
26 program is first established, all new employees, and all employees  
27 given a new job assignment, and shall train employees whenever  
28 new substances, processes, procedures, or equipment are introduced  
29 to the workplace and represent a new hazard, and whenever the  
30 employer receives notification of a new or previously unrecognized  
31 hazard. An employer in the construction industry who is required  
32 to be licensed under Chapter 9 (commencing with Section 7000)  
33 of Division 3 of the Business and Professions Code may use  
34 employee training provided to the employer's employees under a  
35 construction industry occupational safety and health training  
36 program approved by the division to comply with the requirements  
37 of subdivision (a) relating to employee training, and shall only be  
38 required to provide training on hazards specific to an employee's  
39 job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. An employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with this subdivision, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) (A) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For

1 purposes of this subdivision, the “designated list of high hazard  
2 industries” shall be the list established pursuant to this paragraph.

3 (B) For the purpose of implementing this subdivision, the  
4 Department of Industrial Relations shall periodically review, and  
5 as necessary revise, the list.

6 (4) For the purpose of implementing this subdivision, the  
7 Department of Industrial Relations shall also establish a list of low  
8 hazard industries, and shall periodically review, and as necessary  
9 revise, that list.

10 (f) The standard adopted pursuant to subdivision (e) shall  
11 specifically permit employer and employee occupational safety  
12 and health committees to be included in the employer’s injury  
13 prevention program. The board shall establish criteria for use in  
14 evaluating employer and employee occupational safety and health  
15 committees. The criteria shall include minimum duties, including  
16 the following:

17 (1) Review of the employer’s periodic, scheduled worksite  
18 inspections; investigation of causes of incidents resulting in injury,  
19 illness, or exposure to hazardous substances; and investigation of  
20 any alleged hazardous condition brought to the attention of any  
21 committee member. When determined necessary by the committee,  
22 the committee may conduct its own inspections and investigations.

23 (2) (A) Upon request from the division, verification of  
24 abatement action taken by the employer as specified in division  
25 citations.

26 (B) If an employer’s occupational safety and health committee  
27 meets the criteria established by the board, it shall be presumed to  
28 be in substantial compliance with paragraph (5) of subdivision (a).

29 (g) The division shall adopt regulations specifying the  
30 procedures for selecting employee representatives for  
31 employer-employee occupational health and safety committees  
32 when these procedures are not specified in an applicable collective  
33 bargaining agreement. No employee or employee organization  
34 shall be held liable for any act or omission in connection with a  
35 health and safety committee.

36 (h) The employer’s injury prevention program, as required by  
37 this section, shall cover all of the employer’s employees and all  
38 other workers who the employer controls or directs and directly  
39 supervises on the job to the extent these workers are exposed to  
40 worksite and job assignment specific hazards. Nothing in this

1 subdivision shall affect the obligations of a contractor or other  
2 employer that controls or directs and directly supervises its own  
3 employees on the job.

4 (i) When a contractor supplies its employee to a state agency  
5 employer on a temporary basis, the state agency employer may  
6 assess a fee upon the contractor to reimburse the state agency for  
7 the additional costs, if any, of including the contract employee  
8 within the state agency's injury prevention program.

9 (j) (1) The division shall prepare a Model Injury and Illness  
10 Prevention Program for Non-High-Hazard Employment, and shall  
11 make copies of the model program prepared pursuant to this  
12 subdivision available to employers, upon request, for posting in  
13 the workplace. An employer who adopts and implements the model  
14 program prepared by the division pursuant to this paragraph in  
15 good faith shall not be assessed a civil penalty for the first citation  
16 for a violation of this section issued after the employer's adoption  
17 and implementation of the model program.

18 (2) For purposes of this subdivision, the division shall establish  
19 a list of non-high-hazard industries in California. These industries,  
20 identified by their Standard Industrial Classification Codes, as  
21 published by the United States Office of Management and Budget  
22 in the Manual of Standard Industrial Classification Codes, 1987  
23 Edition, are apparel and accessory stores (Code 56), eating and  
24 drinking places (Code 58), miscellaneous retail (Code 59), finance,  
25 insurance, and real estate (Codes 60–67), personal services (Code  
26 72), business services (Code 73), motion pictures (Code 78) except  
27 motion picture production and allied services (Code 781), legal  
28 services (Code 81), educational services (Code 82), social services  
29 (Code 83), museums, art galleries, and botanical and zoological  
30 gardens (Code 84), membership organizations (Code 86),  
31 engineering, accounting, research, management, and related  
32 services (Code 87), private households (Code 88), and  
33 miscellaneous services (Code 89). To further identify industries  
34 that may be included on the list, the division shall also consider  
35 data from a rating organization, as defined in Section 11750.1 of  
36 the Insurance Code, and all other appropriate information. The list  
37 shall be established by June 30, 1994, and shall be reviewed, and  
38 as necessary revised, biennially.

39 (3) The division shall prepare a Model Injury and Illness  
40 Prevention Program for Employers in Industries with Intermittent

1 Employment, and shall determine which industries have historically  
2 utilized seasonal or intermittent employees. An employer in an  
3 industry determined by the division to have historically utilized  
4 seasonal or intermittent employees shall be deemed to have  
5 complied with the requirements of subdivision (a) with respect to  
6 a written injury prevention program if the employer adopts the  
7 model program prepared by the division pursuant to this paragraph  
8 and complies with any instructions relating thereto.

9 (k) With respect to any county, city, city and county, or district,  
10 or any public or quasi-public corporation or public agency therein,  
11 including any public entity, other than a state agency, that is a  
12 member of, or created by, a joint powers agreement, subdivision  
13 (d) shall not apply.

14 (l) Every workers' compensation insurer shall conduct a review,  
15 including a written report as specified below, of the injury and  
16 illness prevention program (IIPP) of each of its insureds with an  
17 experience modification of 2.0 or greater within six months of the  
18 commencement of the initial insurance policy term. The review  
19 shall determine whether the insured has implemented all of the  
20 required components of the IIPP, and evaluate their effectiveness.  
21 The training component of the IIPP shall be evaluated to determine  
22 whether training is provided to line employees, supervisors, and  
23 upper level management, and effectively imparts the information  
24 and skills each of these groups needs to ensure that all of the  
25 insured's specific health and safety issues are fully addressed by  
26 the insured. The reviewer shall prepare a detailed written report  
27 specifying the findings of the review and all recommended changes  
28 deemed necessary to make the IIPP effective. The reviewer shall  
29 be or work under the direction of a licensed California professional  
30 engineer, certified safety professional, or a certified industrial  
31 hygienist.

32 (m) This section shall remain in effect only until July 1, 2017,  
33 and as of that date is repealed.

34 SEC. 2. Section 6401.7 is added to the Labor Code, to read:

35 6401.7. (a) Every employer shall establish, implement, and  
36 maintain an effective injury prevention program. The program  
37 shall be written, except as provided in subdivision (f), and shall  
38 include, but not be limited to, the following elements:

39 (1) Identification of the person or persons responsible for  
40 implementing the program.

1 (2) The employer's system for identifying and evaluating  
2 workplace hazards, including scheduled periodic inspections to  
3 identify unsafe conditions and work practices.

4 (3) The employer's methods and procedures for correcting  
5 unsafe or unhealthy conditions and work practices in a timely  
6 manner.

7 (4) An occupational health and safety training program designed  
8 to instruct employees in general safe and healthy work practices  
9 and to provide specific instruction with respect to hazards specific  
10 to each employee's job assignment.

11 (5) The employer's system for communicating with employees  
12 on occupational health and safety matters, including provisions  
13 designed to encourage employees to inform the employer of  
14 hazards at the worksite without fear of reprisal.

15 (6) The employer's system for ensuring that employees comply  
16 with safe and healthy work practices, which may include  
17 disciplinary action.

18 (b) The employer shall correct unsafe and unhealthy conditions  
19 and work practices in a timely manner based on the severity of the  
20 hazard.

21 (c) The employer shall train all employees when the training  
22 program is first established, all new employees, and all employees  
23 given a new job assignment, and shall train employees whenever  
24 new substances, processes, procedures, or equipment are introduced  
25 to the workplace and represent a new hazard, and whenever the  
26 employer receives notification of a new or previously unrecognized  
27 hazard. An employer in the construction industry who is required  
28 to be licensed under Chapter 9 (commencing with Section 7000)  
29 of Division 3 of the Business and Professions Code may use  
30 employee training provided to the employer's employees under a  
31 construction industry occupational safety and health training  
32 program approved by the division to comply with the requirements  
33 of subdivision (a) relating to employee training, and shall only be  
34 required to provide training on hazards specific to an employee's  
35 job duties.

36 (d) The employer shall keep appropriate records of steps taken  
37 to implement and maintain the program. An employer in the  
38 construction industry who is required to be licensed under Chapter  
39 9 (commencing with Section 7000) of Division 3 of the Business  
40 and Professions Code may use records relating to employee training

provided to the employer in connection with an occupational safety and health training program approved by the division to comply with this subdivision, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) (1) An employer shall keep an up-to-date complete copy of the written injury prevention program referred to in subdivision (a) at each ~~worksite~~, *worksite with three or more employees*, and shall make it available for inspection by any current employee or by the division upon an oral request. The worksite copy shall be in English, and, if the language spoken by the majority of the employees at the worksite is not English, the worksite copy shall also be in the language spoken by the majority of the employees at the worksite.

(2) Commencing July 1, 2017, an employer shall inform each current employee, and, after the operative date of this section, each new employee at the time of hire, in a language understood by the employee, that the employer has a complete copy of the written injury prevention program referred to in subdivision (a) at the worksite; that the employee has a right to inspect it; and that the employee or his or her authorized representative has a right to submit a written request to receive a complete copy of the written injury prevention program referred to in subdivision (a) within five business days at no charge.

(3) An employer who receives a written request for a complete copy of the written injury prevention program referred to in subdivision (a) from a current employee, or his or her authorized representative, shall comply with the request as soon as practicable, but no later than five business days from the date a request pursuant to this paragraph is received. The copy of the written injury prevention program shall be provided to the current employee, or to his or her authorized representative, at no cost. An employer may designate the person to whom a request under this paragraph is to be made. ~~A violation of this paragraph is an infraction.~~ Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this paragraph. For purposes of this paragraph, an "authorized representative" means a person authorized in writing by a current employee to receive a copy of

1 the written injury prevention program referred to in subdivision  
2 (a).

3 (4) An employee is entitled to injunctive relief if an employer  
4 has not timely responded to a written request for a complete copy  
5 of the written injury prevention program pursuant to paragraph (3)  
6 and has failed to comply with a subsequent written demand from  
7 the employee that the employer comply with paragraph (3),  
8 provided that the division has not cited the employer for a failure  
9 to comply with paragraph (3) prior to the employee undertaking  
10 the action seeking injunctive relief.

11 (f) (1) The standards board shall adopt a standard setting forth  
12 the employer's duties under this section, on or before January 1,  
13 1991, consistent with the requirements specified in subdivisions  
14 (a), (b), (c), and (d). The standards board, in adopting the standard,  
15 shall include substantial compliance criteria for use in evaluating  
16 an employer's injury prevention program. The board may adopt  
17 less stringent criteria for employers with few employees and for  
18 employers in industries with insignificant occupational safety or  
19 health hazards.

20 (2) Notwithstanding subdivision (a), for employers with fewer  
21 than 20 employees who are in industries that are not on a  
22 designated list of high hazard industries and who have a workers'  
23 compensation experience modification rate of 1.1 or less, and for  
24 any employers with fewer than 20 employees who are in industries  
25 that are on a designated list of low hazard industries, the board  
26 shall adopt a standard setting forth the employer's duties under  
27 this section consistent with the requirements specified in  
28 subdivisions (a), (b), and (c), except that the standard shall only  
29 require written documentation to the extent of documenting the  
30 person or persons responsible for implementing the program  
31 pursuant to paragraph (1) of subdivision (a), keeping a record of  
32 periodic inspections pursuant to paragraph (2) of subdivision (a),  
33 and keeping a record of employee training pursuant to paragraph  
34 (4) of subdivision (a). To any extent beyond the specifications of  
35 this subdivision, the standard shall not require the employer to  
36 keep the records specified in subdivision (d).

37 (3) (A) The division shall establish a list of high hazard  
38 industries using the methods prescribed in Section 6314.1 for  
39 identifying and targeting employers in high hazard industries. For

1 purposes of this subdivision, the “designated list of high hazard  
2 industries” shall be the list established pursuant to this paragraph.

3 (B) For the purpose of implementing this subdivision, the  
4 Department of Industrial Relations shall periodically review, and  
5 as necessary revise, the list.

6 (4) For the purpose of implementing this subdivision, the  
7 Department of Industrial Relations shall also establish a list of low  
8 hazard industries, and shall periodically review, and as necessary  
9 revise, that list.

10 (g) The standard adopted pursuant to subdivision (f) shall  
11 specifically permit employer and employee occupational safety  
12 and health committees to be included in the employer’s injury  
13 prevention program. The board shall establish criteria for use in  
14 evaluating employer and employee occupational safety and health  
15 committees. The criteria shall include minimum duties, including  
16 the following:

17 (1) Review of the employer’s periodic, scheduled worksite  
18 inspections; investigation of causes of incidents resulting in injury,  
19 illness, or exposure to hazardous substances; and investigation of  
20 any alleged hazardous condition brought to the attention of any  
21 committee member. When determined necessary by the committee,  
22 the committee may conduct its own inspections and investigations.

23 (2) (A) Upon request from the division, verification of  
24 abatement action taken by the employer as specified in division  
25 citations.

26 (B) If an employer’s occupational safety and health committee  
27 meets the criteria established by the board, it shall be presumed to  
28 be in substantial compliance with paragraph (5) of subdivision (a).

29 (h) The division shall adopt regulations specifying the  
30 procedures for selecting employee representatives for  
31 employer-employee occupational health and safety committees  
32 when these procedures are not specified in an applicable collective  
33 bargaining agreement. No employee or employee organization  
34 shall be held liable for any act or omission in connection with a  
35 health and safety committee.

36 (i) The employer’s injury prevention program, as required by  
37 this section, shall cover all of the employer’s employees and all  
38 other workers who the employer controls or directs and directly  
39 supervises on the job to the extent these workers are exposed to  
40 worksite and job assignment specific hazards. Nothing in this

1 subdivision shall affect the obligations of a contractor or other  
2 employer that controls or directs and directly supervises its own  
3 employees on the job.

4 (j) When a contractor supplies its employee to a state agency  
5 employer on a temporary basis, the state agency employer may  
6 assess a fee upon the contractor to reimburse the state agency for  
7 the additional costs, if any, of including the contract employee  
8 within the state agency's injury prevention program.

9 (k) (1) The division shall prepare a Model Injury and Illness  
10 Prevention Program for Non-High-Hazard Employment, and shall  
11 make copies of the model program prepared pursuant to this  
12 subdivision available to employers, upon request, for posting in  
13 the workplace. An employer who adopts and implements the model  
14 program prepared by the division pursuant to this paragraph in  
15 good faith shall not be assessed a civil penalty for the first citation  
16 for a violation of this section issued after the employer's adoption  
17 and implementation of the model program.

18 (2) For purposes of this subdivision, the division shall establish  
19 a list of non-high-hazard industries in California. These industries,  
20 identified by their Standard Industrial Classification Codes, as  
21 published by the United States Office of Management and Budget  
22 in the Manual of Standard Industrial Classification Codes, 1987  
23 Edition, are apparel and accessory stores (Code 56), eating and  
24 drinking places (Code 58), miscellaneous retail (Code 59), finance,  
25 insurance, and real estate (Codes 60–67), personal services (Code  
26 72), business services (Code 73), motion pictures (Code 78) except  
27 motion picture production and allied services (Code 781), legal  
28 services (Code 81), educational services (Code 82), social services  
29 (Code 83), museums, art galleries, and botanical and zoological  
30 gardens (Code 84), membership organizations (Code 86),  
31 engineering, accounting, research, management, and related  
32 services (Code 87), private households (Code 88), and  
33 miscellaneous services (Code 89). To further identify industries  
34 that may be included on the list, the division shall also consider  
35 data from a rating organization, as defined in Section 11750.1 of  
36 the Insurance Code, and all other appropriate information. The list  
37 shall be established by June 30, 1994, and shall be reviewed, and  
38 as necessary revised, biennially.

39 (3) The division shall prepare a Model Injury and Illness  
40 Prevention Program for Employers in Industries with Intermittent

1 Employment, and shall determine which industries have historically  
2 utilized seasonal or intermittent employees. An employer in an  
3 industry determined by the division to have historically utilized  
4 seasonal or intermittent employees shall be deemed to have  
5 complied with the requirements of subdivision (a) with respect to  
6 a written injury prevention program if the employer adopts the  
7 model program prepared by the division pursuant to this paragraph  
8 and complies with any instructions relating thereto.

9 (l) With respect to any county, city, city and county, or district,  
10 or any public or quasi-public corporation or public agency therein,  
11 including any public entity, other than a state agency, that is a  
12 member of, or created by, a joint powers agreement, subdivision  
13 (d) shall not apply.

14 (m) Every workers' compensation insurer shall conduct a  
15 review, including a written report as specified below, of the injury  
16 and illness prevention program (IIPP) of each of its insureds with  
17 an experience modification of 2.0 or greater within six months of  
18 the commencement of the initial insurance policy term. The review  
19 shall determine whether the insured has implemented all of the  
20 required components of the IIPP, and evaluate their effectiveness.  
21 The training component of the IIPP shall be evaluated to determine  
22 whether training is provided to line employees, supervisors, and  
23 upper level management, and effectively imparts the information  
24 and skills each of these groups needs to ensure that all of the  
25 insured's specific health and safety issues are fully addressed by  
26 the insured. The reviewer shall prepare a detailed written report  
27 specifying the findings of the review and all recommended changes  
28 deemed necessary to make the IIPP effective. The reviewer shall  
29 be or work under the direction of a licensed California professional  
30 engineer, certified safety professional, or a certified industrial  
31 hygienist.

32 (n) This section shall become operative on July 1, 2017.

33 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
34 ~~Section 6 of Article XIII B of the California Constitution because~~  
35 ~~the only costs that may be incurred by a local agency or school~~  
36 ~~district will be incurred because this act creates a new crime or~~  
37 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
38 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
39 ~~the Government Code, or changes the definition of a crime within~~

- 1 ~~the meaning of Section 6 of Article XIII B of the California~~
- 2 ~~Constitution.~~

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